



REPUBLIC OF KENYA



KENYA LAW
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Mwangi v Mwangi (Suing through her Attorney Mary Njeri Kariuki) & another (Environment & Land Case 167 of 2018) [2025] KEELC 1375 (KLR) (19 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1375 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 167 OF 2018**

**BM EBOSO, J
MARCH 19, 2025**

BETWEEN

HENRY KARIUKI MWANGI PLAINTIFF

AND

**JOYCE WAITHIRA MWANGI (SUING THROUGH HER ATTORNEY MARY
NJERI KARIUKI) 1ST DEFENDANT**

THE LAND REGISTRAR, THIKA 2ND DEFENDANT

RULING

1. Falling for determination in this ruling are two post-judgment applications brought by the 1st defendant, Joyce Waithira Mwangi. The first application is the notice of motion dated 3/11/2023 through which she seeks an order reviewing the Judgment of this Court rendered on 21/7/2022 and the decree issued on 18/10/2023. The second application is the notice of motion dated 13/10/2024. Through it, she seeks an order directing the plaintiff to produce certified statements of accounts for Account Numbers 80997552 and 0150142191700 held at Barclays Bank and Standard Chartered Bank respectively. As an alternative to the above plea, the 1st defendant prays for a production order directing the two banks to produce certified statements relating to the two accounts. I will first dispose the application seeking a review of the Judgment.

Application dated 3/11/2023

2. The application dated 3/11/2023 was premised on the grounds outlined on the face of the motion and in the supporting and the supplementary affidavits sworn by Mary Njeri Kariuki, the applicant's attorney. The supporting affidavit was sworn on 3/11/2023. The date of the supplementary affidavit is not legible because it has been altered by hand. The application was canvassed through written submissions dated 10/12/2024.



3. The case of the applicant is that, there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within her knowledge or could not be produced by her at the time “when the order was made,” to wit: (i) Western Union receipts and transfer from the 1st defendant (applicant) to the plaintiff; (ii) Accounts statement for the plaintiff’s account number 200-0043719 held by the plaintiff at HFCK; and (iii) the sale agreement for the suit property dated 10th March 2024.
4. The plaintiff opposed the application through a replying affidavit dated 1/2/2024 and written submissions dated 16/12/2024. The case of the plaintiff is that the application does not meet the threshold for review of a judgment under Order 45 rule 1 of the Civil Procedure Rules. The plaintiff contends that his statement of accounts at HFCK was produced as an exhibit during trial in this suit. He adds that if the applicant had a question on how funds were paid, she had the liberty to call officers from the banks involved. He points out that the exhibited communication between the applicant and HFCK was initiated in May 2023 long after this Court had rendered its Judgment. It is the plaintiff’s case that what was in issue in this suit was the question as to how the 1st defendant transferred the suit property to herself, adding that the alleged new evidence does not answer that question. The plaintiff contends that the issues raised in the application are issues that were raised during trial, adding that if the applicant is dissatisfied with the findings of the Court, the recourse available to her is an appeal. He urges the Court to reject the application.
5. The Court has considered the application, the response to the application, the parties’ respective submissions on the application, the relevant legal frameworks and the relevant jurisprudence. The single question falling for determination in this ruling is whether the threshold for review of a judgment under Order 45 rule 1 of the Civil Procedure Rules has been met.
6. The jurisdiction of this court to review its own judgments is conferred by Section 80 of the *Civil Procedure Act* which provides as follows;

“ Any person who considers himself aggrieved—

 - (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”
7. The principles that guide the exercise of the above jurisdiction have been legislated in Order 45 rule 1 of the Civil Procedure Rules as follows:

“(1) Any person considering himself aggrieved—

 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him a the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree



or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

8. Review jurisdiction under Order 45 rule 1 of the Civil Procedure Rules is exercised on well-settled jurisprudential principles. In *Sanitam Services (E.A.) Limited v Rentokil (K) Limited & another* [2019] eKLR the Court of Appeal emphasized the following criteria which guides our trial courts when exercising the jurisdiction:

“Jurisdiction to review a judgment or order of a court is donated by Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. By those provisions of law any person considering himself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or is aggrieved by a decree or order by which no appeal is allowed and who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason – a person who fits within those categories may apply for a review of judgment or to the court which passed the decree or made the order and this should be done without unreasonable delay.”

9. In *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020] eKLR the Court of Appeal observed as follows:

“Section 80 of the *Civil Procedure Act* and order 45 rule 1 of the Civil Procedure Rules gives the court unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However, as it has been constantly stated this discretion should be exercised judiciously and not capriciously.....”

‘.....The main grounds for review are therefore; discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.’”

10. Suffices it to state that, for this Court to exercise review jurisdiction under Order 45 rule 1 of the Civil Procedure Rules, the applicant must satisfy the legislated criteria set out under Order 45 rule 1 of the Civil Procedure Rules. If an applicant does not satisfy the legislated criteria, the court would not have jurisdiction to revisit and review its own judgment or ruling.
11. The applicant has invited the Court to revisit and review its Judgment on the ground that she has discovered new and important matter or evidence which was not within her knowledge or could not be produced at the time Judgment in this matter was rendered. She has itemized the alleged new matter or evidence as: (i) Western Union receipts and transfer from the 1st defendant (applicant) to the plaintiff; (ii) Accounts statement for the plaintiff’s account number 200-0043719 held by the plaintiff at HFCK; and (iii) the sale agreement for the suit property dated 10th March 2024. The prayer for review does not specify what specific findings or orders are sought in place of the findings and orders that were made in the impugned Judgment.
12. The two exhibited documents relating to Western Union are transaction history request forms. They are blank forms. They do not contain any evidence that would warrant a review. Further, if the 1st defendant desired to use new evidence from Western Union, she had ample time of over four years to procure and use it during trial. She elected not to do anything about evidence from the Western Union.



In the circumstances, the said blank forms cannot be described as new evidence that the applicant could not obtain on exercise of due diligence.

13. The plaintiff's HFCK Account Statement which the applicant terms as newly discovered evidence was not exhibited. In any event, if the appellant wanted to use the said evidence during trial, nothing prevented her from moving the court for an order compelling HFCK to produce the statement. No such application was made prior to or during trial.
14. Lastly on the three alleged pieces of new evidence, a perusal of the sale agreement which the applicant contends is newly discovered evidence reveals that the suit property was purchased by the plaintiff and the 1st defendant [the applicant] from one Michael Kimani Wabacha. This supports the finding of the court on the issue of co-proprietorship of the suit property. It cannot be said to be a piece of evidence that would change the trajectory of the findings of the court on the issue.
15. Most importantly, one of the key issues in the suit was the question as to whether the 1st defendant fraudulently procured the registration of the suit property into her name as sole proprietor. The alleged new evidence does not speak to this key issue, meaning that the finding of the court to the effect that the 1st defendant fraudulently procured the registration remains undisturbed.
16. It is clear from the materials presented to the court that after it rendered the impugned Judgment, the observations and findings contained in the said Judgment prompted the applicant to start fishing for evidence with a view to re-opening her case post-judgment to fill the gaps that had been pointed out in the Judgment. The exhibited blank request forms relating to Western Union is one clear piece of evidence informing this observation. Regrettably, what the applicant is trying to do is not the intended objective of Order 45 rule 1 of the Civil Procedure Rules.
17. For the above reasons, the Court comes to the finding that the threshold for review of a judgment under Order 45 rule 1 of the Civil Procedure Rules has not been met. I now turn to the application dated 13/10/2024.

Application dated 13/10/2024

18. Through the post-judgment application dated 13/10/2024, the 1st defendant seeks an order directing the plaintiff to produce certified statements of accounts for account numbers 80997552 and 0150142191700 held at Barclays Bank and Standard Chartered Bank respectively. As an alternative to the above plea, she seeks a production order directing the two banks to produce certified statements relating to the two accounts.
19. Judgment in this matter was rendered on 21/7/2022. The 1st defendant's plea for a review of the Judgment has been considered and has been found to be unmerited. The plea has been rejected. The post-judgment jurisdiction of this court at this point is limited in scope. The court does not have post-judgment jurisdiction to issue orders for tender or production of new trial evidence at this point. For the above reasons, the application dated 13/10/2024 is rejected and dismissed for lack of merit.
20. In tandem with the general principle in Section 27 of the *Civil Procedure Act*, the 1st defendant [the applicant] shall bear costs of the two applications.

DATED SIGNED AND DELIVERED AT VIRTUALLY THIS 19TH DAY OF MARCH 2025.

B M EBOSO [MR]

JUDGE

In the Presence of



Mr Muthee holding brief for Ms Waithira Mwangi for the Plaintiff

Mr Tupet – Court Assistant

